S.B.Civil Misc. Appeal No87/92
The Oriental Insurance Company Ltd.
vs.
Smt. Om Kumari & ors.

Date of Order: 03.7.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. D.R. Loonkar for the appellant.

Heard learned counsel for the appellant.

This appeal is against the award passed by the Workmen Compensation Commissioner, Pali dated 9.12.1991 in claim case no.19/88 whereby the learned Workmen Compensation Commissioner awarded compensation amount of Rs.75,824/-, interest Rs.15,923/- and expenses 150/-, in total, Rs.91,987/-. The learned Workmen Compensation Commissioner rejected the defence of the appellant-Insurance Company and held that the appellant-Insurance Company failed to prove the fact that the insurance policy issued for the vehicle involved in the accident was cancelled and further failed to prove that the appellant Insurance Company repaid the premium amount to the insured. Therefore, the learned workmen Compensation Commissioner held that the appellant Insurance Company shall be liable to pay the entire amount to the claimant.

According to the learned counsel for the appellant, it is clear from the document placed on record by the Insurance Company along

with the reply to the claim petition dated 7.4.1988 that the cover note was issued for the vehicle in question but it was for 15 days because of the reason that the insured gave cheque for the getting the vehicle insured but said cheque was dishonored and, therefore, the appellant Insurance Company cancelled the contract of insurance and gave letter to the insured which is dated 7.4.1988. In view of the above, the learned Workmen Compensation Commissioner was wrong in observing that the appellant-Insurance Company did not prove re-payment of the premium amount to the insured and, therefore, the insurance remained in force.

I considered the submissions of the learned counsel for the appellant and perused the record also.

It appears that the appellant Insurance Company, in their reply to the claim petition, took a plea that the vehicle was never insured with the Insurance Company. However, in additional pleas it was stated that the insured gave his cheque for premium amount but said cheque was dishonored by the Bank and, therefore, the appellant Insurance Company cancelled the policy issued to the insured for the vehicle in question vide letter dated 7.4.1988. Despite taking this defence, the appellant Insurance Company did not produce any evidence. It is settled law that the document does not speak itself. Contrary to it, the owner of the vehicle himself appeared in the witness-box and stated that his

vehicle was got insured and the period of insurance policy is from 14.1.1988 to 13.1.2989. This finds support from the certificate of insurance issued by the appellant Insurance Company which contains the policy number as well as certificate number of insurance policy. It also contains the period of insurance,i.e., the effective date of commencement 14.1.1988 to the date of expiry of insurance 13.1.1989. In cross-examination, the insured stated that he never received letter dated 7.4.1988(even in cross-examination it has not been got exhibited by the Insurance Company). Be it as it may be, the fact remains is that the cover note was issued in favour of the insured for the vehicle in question by the Insurance Company and there is mention of payment of premium and if the cheque was given and it was dishonored then it was the duty of the Insurance Company to prove the fact. It became all the more necessary when the owner of the vehicle himself gave his statement and proved the fact that he got the vehicle insured for the period 14.1.1988 to 13.1.1989 and he gave the payment for the policy which was issued to the insured by the appellant Insurance Company and further he denied the suggestion that the Insurance Company cancelled the insurance and gave letter to the insured dated 7.4.1988.

In view of the above, mere a line from the award mentioning that the appellant Insurance Company did not prove repayment of the premium is not very much relevant. It appears that learned Workmen

Compensation Commissioner held that the insured proved payment by his oral evidence supported by admitted document, i.e. the cover note issued by the Insurance Company and the appellant Insurance Company failed to prove that they did not receive the cheque amount or if received then the Insurance Company has repaid the amount to the insured and cancelled the policy before accident occurred.

In view of the above, I do not find any merit in this appeal and hence the appeal of the appellant is dismissed.

(**PRAKASH TATIA),J.**

mlt.